



Federal Communications Commission  
Washington, D.C. 20554

November 3, 2017

DA 17-1083

Kent D. Bressie  
Harris, Wiltshire & Grannis LLP  
1919 M Street, NW, Suite 800  
Washington, DC 20036

**RE: Request for Waiver of Interim and Final Geographic Construction Benchmarks for Lower 700 MHz Band A and B Block Licenses WQJQ800 and WQOU674 in American Samoa**

Dear Mr. Bressie:

This letter addresses the above referenced requests for waiver of the interim and final construction requirements filed by AST Telecom, LLC d/b/a Bluesky (Bluesky) with respect to two of its licenses in American Samoa.<sup>1</sup> For the reasons and to the extent described below, we hereby (1) grant Bluesky's request for waiver of the interim construction benchmark, and (2) deny Bluesky's request for waiver of the final construction benchmark. We find that grant of a temporary waiver of Section 27.14(g)(1)'s interim construction deadline will serve the underlying purpose of the Commission's rules by facilitating deployment of advanced wireless services to the citizens of American Samoa. However, for the reasons stated below, we find that the record before us does not support Bluesky's request for waiver of the final construction requirement and that the public interest is best served by strict application of Section 27.14(g)(2) of the Commission's rules.

**I. BACKGROUND**

In the *700 MHz Second Report and Order*, the Commission adopted interim and end-of-license term construction benchmarks for certain 700 MHz band licensees.<sup>2</sup> The Commission's rules for the Lower 700 MHz band A and B Block require licensees to provide signal coverage and offer service over at least 35 percent of the geographic area of their license at the interim construction deadline,<sup>3</sup> and to provide signal coverage and offer service over at least 70 percent of the geographic area of the license by the final construction deadline.<sup>4</sup> Section 27.14(g)(1) provides that if a licensee does not satisfy the interim construction benchmark, its license term will be reduced by two years, thereby requiring it to meet the final construction benchmark two years sooner.<sup>5</sup> Further, if a licensee does not meet its final construction benchmark, it will be subject to a "keep-what-you-serve" rule, whereby its "authorization

<sup>1</sup> AST Telecom, LLC d/b/a Bluesky, Request for Waiver of Interim and Final Geographic Construction Benchmarks for Lower 700 MHz Band A and B Block Licenses WQJQ800 and WQOU674 in American Samoa, ULS File Nos. 0007595216 and 0007597075 (filed Apr. 10, 2017) (Bluesky Waiver Request).

<sup>2</sup> See *Service Rules for 698-746, 747-762, and 777-792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289 (2007) (*700 MHz Second Report and Order*).

<sup>3</sup> See 47 CFR § 27.14(g). For most A and B Block licenses, the interim construction deadline was originally June 13, 2013, but was later extended for all A and B Block licenses – including those auctioned in 2011 – to December 13, 2016. See *Promoting Interoperability in the 700 MHz Commercial Spectrum*, Report and Order and Order of Proposed Modification, 28 FCC Rcd 15122, 15151-52, para. 65 (2013) (*Interoperability Order*).

<sup>4</sup> See 47 CFR § 27.14(g); *700 MHz Second Report and Order*, 22 FCC Rcd at 15293-94, 15349, paras. 6, 157.

<sup>5</sup> 47 CFR § 27.14(g)(1).

will terminate automatically without Commission action for those geographic portions of its license in which the licensee is not providing service, and those unserved areas will become available for reassignment by the Commission.”<sup>6</sup>

Bluesky holds the Lower 700 MHz A and B Block licenses in American Samoa, which are coextensive and cover the area of the American Samoa territory. Bluesky acquired the A Block license – WQJQ800 – at auction in 2008,<sup>7</sup> and the B Block license – WQOU674 – through assignment from Club 42CM Limited Partnership, which was consummated on January 25, 2017.<sup>8</sup> Following the extensions granted by the Commission in the *Interoperability Order*, both licenses had an interim construction deadline of December 13, 2016.<sup>9</sup> The A Block license has a final construction deadline of June 13, 2019 and the B Block license has a final construction deadline of February 3, 2022.<sup>10</sup>

Prior to the December 13, 2016 interim construction deadline, Bluesky filed requests for extension of time until January 27, 2017 to meet the interim construction requirements for both licenses, citing a delay in shipment from its equipment manufacturer, which the Mobility Division (Division) of the Wireless Telecommunications Bureau (Bureau) granted on December 14, 2016.<sup>11</sup> Bluesky filed timely construction notifications for both licenses, claiming to meet the 35 percent geographic coverage requirement.<sup>12</sup> However, on February 7, 2017, the Division sent letters returning the construction notifications (Return Letters), citing two deficiencies that resulted in Bluesky overestimating the level of coverage it provided in American Samoa.<sup>13</sup> First, because Bluesky did not use the market boundary maps specified by the Commission, the filings underrepresented the size of the market area.<sup>14</sup> Second, because Bluesky relied on a signal level that was below accepted industry standards for an LTE system, the filings overestimated Bluesky’s geographic coverage in the market area.<sup>15</sup>

*Waiver Request.* On April 10, 2017, Bluesky filed an amended construction notification for both licenses, claiming to satisfy the 35 percent geographic coverage requirement as of that date and seeking

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<sup>6</sup> *Id.* § 27.14(g)(2). See also *700 MHz Second Report and Order*, 22 FCC Rcd at 15348, para. 153.

<sup>7</sup> See *Auction of 700 MHz Band Licenses Closes; Winning Bidders Announced for Auction 73*, Public Notice, 23 FCC Rcd 4572, 4583 (2008).

<sup>8</sup> See ULS File No. 0007294780.

<sup>9</sup> *Interoperability Order*, 28 FCC Rcd at 15151-52, para. 65

<sup>10</sup> See *Implementation of the DTV Delay Act, et al.*, Second Report and Order and Notice of Proposed Rulemaking, 24 FCC Rcd 2526, 2542-43, para. 38-39 (2009) (extending the initial authorization terms for certain 700 MHz licensees until June 13, 2019); *Wireless Telecommunications Bureau Grants 700 MHz Band Licenses*, Public Notice, 27 FCC Rcd 580, Appx. A (WTB 2012) (granting the B Block license on February 3, 2012 for a period of 10 years).

<sup>11</sup> Bluesky, Request for Limited Extension of Time to Meet Interim Construction Requirements, ULS File No. 0007586282 (WQJQ800, filed Dec. 9, 2016) and ULS File No. 0007588143 (WQOU674, filed Dec. 12, 2016).

<sup>12</sup> See ULS File Nos. 0007595216 and 0007597075, later amended to include exhibits of Bluesky’s subsequent construction and the present waiver requests.

<sup>13</sup> See *id.*, Notice of Return Letters, Reference Nos. 6228472 and 6228473. Division staff reviewed Bluesky’s December 2016 construction notification and found that, after correcting for the discrepancies contained in the filing, Bluesky provided coverage to 23.42 percent of the geographic area of the license as of the December 13, 2016 interim construction deadline.

<sup>14</sup> See *id.* at 1.

<sup>15</sup> *Id.* at 2.

waiver of Section 27.14(g) of the Commission's rules. Specifically, Bluesky stated that, after correcting the deficiencies pointed out by the Return Letters, it provided coverage to 45 percent of the geographic area of the license by March 6, 2017.<sup>16</sup> Bluesky's waiver request sought three alternative forms of relief with respect to the interim construction benchmark, asking the Bureau to either: (1) accept the December construction notifications as "substantial compliance" with the interim benchmark; (2) waive Section 27.14(g)(1) to replace the interim 35 percent geographic coverage requirement with a population-based benchmark and accept the December construction notifications pursuant to that standard; or (3) grant a short waiver of Section 27.14(g)(1)'s interim construction deadline until March 6, 2017, and accept the amended construction notifications as demonstrating compliance as of that date.<sup>17</sup> Regarding the final construction benchmark, Bluesky's request seeks a waiver of 27.14(g)(2) to replace the final geographic coverage requirement with a 70 percent population-based benchmark.<sup>18</sup>

In support of its request that the Bureau accept the December 2016 construction notifications, Bluesky argues that the filings demonstrate "substantial compliance" with the interim construction benchmark because "the deficiencies identified in the Return Letters are either immaterial to the experience of wireless consumers on American Samoa or reasonable in light of the specifications provided to Bluesky by its equipment manufacturer."<sup>19</sup> Bluesky argues that prior to receiving the Return Letters, it made every effort to timely comply with the interim construction benchmark and believed that it did, in fact, comply as of the deadline. Further, after receiving the Return Letters, Bluesky states that it "worked tirelessly to achieve compliance with the interim benchmark using a coverage estimate that conformed to the expectations conveyed in the Return Letters," and achieved that compliance on March 6, 2017, expanding its coverage to nearly 45 percent geographic coverage of the license area.<sup>20</sup>

In the alternative, Bluesky asks the Bureau to waive Section 27.14(g)(1) to replace the interim 35 percent geographic coverage requirement with a population-based benchmark, and accept the construction notifications, as amended, which demonstrate that Bluesky provided service to more than 47 percent of the population as of the December 2016 deadline.<sup>21</sup> Bluesky argues that its ability to serve nearly half of the population in its license area by the December 13, 2016 interim construction deadline despite the unique market conditions in American Samoa "demonstrates sufficient progress to meet the purpose of the interim buildout requirement."<sup>22</sup> Bluesky therefore asks that the Bureau grant the waiver and accept the interim construction notifications as filed pursuant to a population-based benchmark.<sup>23</sup>

If the Bureau declines to apply a population-based interim construction benchmark, Bluesky asks that we grant a short waiver of Section 27.14(g)(1)'s interim construction deadline until March 6, 2017, and accept the amended construction notifications as demonstrating compliance as of that date.<sup>24</sup> Bluesky

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<sup>16</sup> Bluesky Waiver Request at 16-17.

<sup>17</sup> *Id.* at 1-2.

<sup>18</sup> *Id.* at 1.

<sup>19</sup> *Id.* at 14.

<sup>20</sup> *Id.* at 14-15

<sup>21</sup> *Id.* at 17.

<sup>22</sup> Bluesky Waiver Request at 17.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

states that it “undertook extraordinary efforts to achieve full compliance” with the construction requirement upon receipt of the Return Letters.<sup>25</sup> After receiving the delayed equipment from its supplier on February 15, 2017, “Bluesky’s engineering and construction teams worked seven days a week, from pre-dawn hours to the late night, to install as many sites as possible.”<sup>26</sup> Waiving the rules to provide an extension until March 6, 2017 would support the underlying purpose of the Commission’s rules and serve the public interest, Bluesky argues, because rather than speculating or squatting on its Lower 700 MHz spectrum holdings, Bluesky acquired spectrum vital to its LTE network on the secondary market and “put it to use in record time.”<sup>27</sup> Moreover, Bluesky states that it “genuinely believed, and had a good faith basis for believing, that it was in compliance with the interim requirements, and made extraordinary efforts to address the perceived failures of its initial filing,” expanding coverage to nearly 45 percent of the geographic area and more than 90 percent of the population of the license area by March 6, 2017.<sup>28</sup>

Finally, Bluesky seeks a waiver of the final 70 percent geographic coverage requirement in favor of a 70 percent population-based benchmark, arguing that “the geographic, demographic, environmental, and economic conditions in American Samoa create a uniquely challenging environment in which to build a mobile broadband network – and make compliance with the Commission’s geographic coverage benchmarks impracticable.”<sup>29</sup> Bluesky points out that large parts of the market area are “entirely uninhabited or sparsely inhabited, and unserved by basic infrastructure including roads, electricity, and backhaul.”<sup>30</sup> In addition to difficulty caused by lack of regular flights or shipping routes between the islands, Bluesky states that the inability of signal to penetrate the mountainous terrain reduces its ability to expand coverage to the island of Manu’a, which accounts for 28 percent of the territory’s total land area.<sup>31</sup> In light of these circumstances, Bluesky contends that application of a geographic coverage requirement and the Commission’s “keep-what-you-serve” regime would undermine the purpose of the rules, as it would limit Bluesky’s ability to expand service in the market area in the future.<sup>32</sup> For the same reasons, Bluesky argues that application of the rules would be inequitable, unduly burdensome, and contrary to the public interest, as it would “put Bluesky through the onerous and unnecessary process of having to reapply” for the portions of the license area returned to the Commission’s inventory for relicensing.<sup>33</sup>

## II. DISCUSSION

*Waiver Standard.* Requests to waive Commission rules must “meet a high hurdle at the starting gate.”<sup>34</sup> In determining whether that standard is met, we must evaluate each case based on the specific circumstances it presents. It is well-established that the Commission may waive a rule where the

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<sup>25</sup> *Id.* at 18.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 18-19.

<sup>28</sup> Bluesky Waiver Request at 10, 19.

<sup>29</sup> *Id.* at 5.

<sup>30</sup> *Id.* at 11.

<sup>31</sup> *Id.* at 11-12.

<sup>32</sup> *Id.* at 12. *See also* 47 CFR § 1.925(b)(3)(i).

<sup>33</sup> Bluesky Waiver Request at 13. *See also* 47 CFR § 1.925(b)(3)(ii).

<sup>34</sup> *See WAIT Radio v. FCC*, 459 F.2d 1203, 1207 (D.C. Cir. 1972).

particular facts make strict compliance inconsistent with the public interest,<sup>35</sup> and it may take into account unique considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.<sup>36</sup> The Commission may grant a waiver pursuant to Section 1.925(b)(3) of the Commission's rules when: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>37</sup>

*Interim Benchmark.* We have carefully reviewed the record before us and find that the underlying purpose of Section 27.14(g)—“to better promote access to spectrum and the provision of service, especially in rural areas”<sup>38</sup>— would be frustrated by strict application of the rule here, and that grant of the requested waiver to provide additional time for Bluesky to meet its interim construction requirements will serve the public interest.

We find that the totality of the factors involved in the instant case show that strict application of the December 13, 2016 deadline would undermine the purpose of Section 27.14(g)(1). The record reflects that Bluesky intended to meet the interim construction benchmark, and believed in good faith that it did meet the requirement as of the deadline. Bluesky's intent to construct as required is demonstrated by its efforts to achieve the 35 percent geographic coverage requirement, despite delays in shipment from its equipment manufacturer that disrupted its otherwise timely construction schedule.<sup>39</sup> Upon receiving a partial delivery the day before the interim deadline, Bluesky completed installation of the equipment overnight and filed timely construction notifications shortly thereafter.<sup>40</sup> Relying on signal strength levels provided by its equipment manufacturer when calculating its coverage at the interim construction deadline, Bluesky believed in good faith that it was in full compliance with the Commission's requirements.<sup>41</sup> Upon receipt of the Return Letters, Bluesky immediately began work to come into compliance using an appropriate calculation methodology and worked diligently to expand its coverage to nearly 45 percent of the geography in less than a month.<sup>42</sup>

Bluesky's efforts to comply with the Commission's performance rules are noteworthy in light of the difficulties associated with constructing this market. American Samoa is a remote, unincorporated territory of the United States, with limited flights to the mainland and no regular flights or shipping routes between the islands.<sup>43</sup> The bulk of resources must be ordered months in advance and skilled telecommunications personnel capable of constructing wireless facilities usually must be brought in from

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<sup>35</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

<sup>36</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166.

<sup>37</sup> 47 CFR § 1.925(b)(3).

<sup>38</sup> *700 MHz Second Report and Order*, 22 FCC Rcd at 15348, para. 153.

<sup>39</sup> Bluesky Waiver Request at 15, 18-20.

<sup>40</sup> *Id.* at 16.

<sup>41</sup> *Id.* at 16, 18-19.

<sup>42</sup> *Id.* at 18-20.

<sup>43</sup> *Id.* at 9.

the mainland.<sup>44</sup> Further, while 98 percent of the territory's population resides on the largest island of Tutuila, and the nearby Aunu'u, those islands account for only 72 percent of American Samoa by land area.<sup>45</sup> American Samoa's volcanic islands, which in some areas lack electricity and basic infrastructure,<sup>46</sup> are extremely rugged, steep, and largely covered by forest,<sup>47</sup> causing difficulties in terms of site construction as well as signal propagation.<sup>48</sup> Moreover, American Samoa experiences a cyclone (hurricane) season for six months out of the year which causes frequent storms that can interfere with deployment and operations.<sup>49</sup>

Despite these conditions, Bluesky has worked diligently to deploy advanced wireless services in American Samoa in a timely manner. In light of Bluesky's ongoing efforts, we are persuaded that it is committed to overcoming existing barriers to full deployment of its LTE network. Given its efforts to build its network despite the difficulty of constructing facilities in this area, we find that the public interest is served by granting additional time to meet the interim requirements and maintaining Bluesky's full license term, rather than accelerating the final construction deadline by two years. The waiver will allow Bluesky to continue expanding its network and building in remote areas that might not otherwise be served. Indeed, Bluesky gives examples of at least two wireless sites that, with more time, could be connected to its LTE network and would serve small local populations living on the more remote islands of American Samoa.<sup>50</sup> Accordingly, in light of the discussion herein, Bluesky's demonstrated intent and efforts to satisfy the interim construction benchmark, and its good faith belief that it did, in fact, meet the requirement, we find that the underlying purpose of Section 27.14(g)(1) would not be served by strict application of the December 13, 2016 deadline in this case, and that waiver of Section 27.14(g)(1) until March 6, 2017 is warranted to provide Bluesky additional time to meet its interim 35 percent geographic coverage requirement.<sup>51</sup>

We note that our geographic service areas, including those adopted for the 700 MHz band, are based on county boundaries, which extend into water pursuant to state and federal law.<sup>52</sup> In American

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<sup>44</sup> *Id.* at 8-9.

<sup>45</sup> Bluesky Waiver Request at 6; U.S. Census Bureau, 2010 Census Island Areas, *American Samoa, Population Count*, <https://www.census.gov/2010census/news/press-kits/island-areas/island-areas.html> (last visited Sept. 29, 2017).

<sup>46</sup> Data regarding access to electricity, including rural access, can be found at: Central Intelligence Agency, The World Factbook, *Australia-Oceania: American Samoa: Energy*, <https://www.cia.gov/library/publications/the-world-factbook/geos/aq.html> (last visited Sept. 29, 2017); The World Bank, Sustainable Energy for All: Access to Electricity, American Samoa, <http://data.worldbank.org/indicator/EG.ELC.ACCS.ZS?locations=AS> (last visited Sept. 29, 2017).

<sup>47</sup> Office for Coastal Management, National Oceanic and Atmospheric Administration, American Samoa <https://coast.noaa.gov/states/american-samoa.html> (last visited Sept. 29, 2017).

<sup>48</sup> Bluesky Waiver Request at 11-12.

<sup>49</sup> *Id.* at 8.

<sup>50</sup> *Id.* at 11-12.

<sup>51</sup> Because we grant Bluesky additional time, we need not address the alternative forms of relief from the interim construction benchmark contained in the waiver request.

<sup>52</sup> *Cellular Service and Other Commercial Mobile Radio Services in the Gulf of Mexico*, Report and Order, 17 FCC Rcd 1209, 1224, para. 46 (2002); *Common Carrier Public Mobile Services Information Cellular MSA/RSA Markets*



Samoa, county (or district) boundaries extend three nautical miles into the water,<sup>53</sup> and Bluesky's filing should have reflected those boundaries and included the water area when calculating its geographic coverage requirement.<sup>54</sup> However, in the public notice that provided licensees with the templates and market-based boundary files to be used for 700 MHz construction demonstrations, the Bureau inadvertently used shapefiles that reflected the American Samoa market area as being coterminous with the land boundaries of the territory.<sup>55</sup> Because Bluesky relied in good faith on the Commission's guidance regarding the boundaries of its licenses, we find, on our own motion, that good cause exists to accept Bluesky's interim benchmark construction notifications demonstrating at least 35 percent geographic coverage of this market as it was defined pursuant to the *700 MHz Public Notice*.<sup>56</sup>

*Final Benchmark.* In addition to the relief requested with respect to the interim construction requirement, Bluesky seeks a waiver of the final geographic coverage requirement in favor of a population-based requirement.<sup>57</sup> Upon review of the record, we find that grant of Bluesky's request for waiver of the final construction requirement would frustrate the underlying purpose of the rule, and that strict application of the geographic coverage requirement in the instant case would not be inequitable, unduly burdensome, or contrary to the public interest.

We disagree with Bluesky's argument that applying a geographic benchmark in this instance would undermine the purpose the Commission's 700 MHz construction requirements. In establishing a geographic coverage requirement for certain 700 MHz bands, the Commission sought to encourage licensees to deploy networks in rural and remote areas, rather than focusing service on population centers.<sup>58</sup> In the instant case, while Bluesky provides service to more than 90 percent of the population of American Samoa, its service area accounts for only 45 percent of the geographic area of the territory. By maintaining the 70 percent final geographic coverage requirement, Bluesky will have a continued incentive to expand its network and deploy wireless services to the more remote areas that are home to small communities of American Samoans. Indeed, if we were to grant a waiver to replace the 70 percent geographic coverage requirement with a population-based benchmark, Bluesky would already exceed that benchmark. Grant of the requested relief would therefore undermine the underlying purpose of Section 27.14(g)(2).

We also do not find support in the record that it would be inequitable, unduly burdensome, or contrary to the public interest to apply the geographic coverage requirement at Bluesky's final construction deadline. It is the responsibility of the licensee to conduct its due diligence to ensure that it

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*and Counties*, Public Notice, 6 FCC Rcd 742 (1992). See also 47 CFR § 27.6(a), (c)(1)-(2). In certain services, exceptions exist with respect to geographic markets in the Gulf of Mexico area.

<sup>53</sup> 48 U.S.C. § 1705.

<sup>54</sup> See *Service Rules for 698-746, 747-762, and 777-792 MHz Bands et al.*, Memorandum Opinion and Order on Reconsideration, 28 FCC Rcd 2671, 2675, para. 8 (2013) (*700 MHz Second R&O Order on Reconsideration*).

<sup>55</sup> See *Wireless Telecommunications Bureau Establishes Electronic Map Format for Covered 700 MHz Band Licensee Construction Notifications*, Public Notice, 30 FCC Rcd 11407 (WTB 2015) (*700 MHz Public Notice*).

<sup>56</sup> 47 CFR § 1.3. Bluesky will, however, be required to use the correct market boundaries to satisfy its geographic coverage requirement at the final benchmark. We are in the process of correcting the market information.

<sup>57</sup> Bluesky Waiver Request at 1, 9-13.

<sup>58</sup> See *700 MHz Second Report and Order*, 22 FCC Rcd at 15348-49, paras. 153-58.

can meet its performance obligations as required by the Commission's rules.<sup>59</sup> The Commission established the geographic coverage requirements for 700 MHz licensees with the goal of encouraging deployment to remote and rural areas – often the most difficult to serve – that might otherwise lack adequate access to services.<sup>60</sup> While the Commission recognized certain factors might make construction of wireless facilities more challenging in some areas than others, it reaffirmed this goal on reconsideration of the *700 MHz Second Report and Order*, noting that while licensees may seek waivers of the geographic coverage requirement if they believe the circumstances in a particular area warrant relief, such requests “must be well founded and not based solely on grounds of low population density.”<sup>61</sup> When it acquired the licenses, Bluesky knew or should have known of the Commission's performance benchmarks for the 700 MHz band and the challenges presented by American Samoa in meeting those obligations. While we recognize that geographic and environmental conditions associated with this area present difficulties in deploying service, we are not persuaded that such difficulties preclude additional construction or outweigh the public interest in providing service to remote areas of American Samoa. Aside from the challenges of serving American Samoa, which it has demonstrated its ability to overcome,<sup>62</sup> Bluesky's request focuses largely on the sparse populations located in the remaining unserved areas in the market, and is therefore unpersuasive as grounds for relief.

We also disagree with Bluesky's argument that potential application of the “keep-what-you-serve” rule as a result of its possible failure to satisfy the final construction benchmark would undermine the underlying goal of the 700 MHz construction requirements or would be inequitable, unduly burdensome, and contrary to the public interest. Pursuant to Section 27.14(g)(2), if Bluesky is unable to satisfy the final 70 percent geographic coverage requirement, it will retain its authorization in all of the license areas in which it is providing service as of the final deadline, and the remaining unserved areas will return to the Commission's inventory for relicensing.<sup>63</sup> The Commission's goal in establishing these rules was to promote the provision of service, especially in rural areas, and, where areas remain unserved, to give others the “opportunity to acquire spectrum that is not adequately built out and provide services to those who reside in those areas.”<sup>64</sup> By its own admission, Bluesky is already providing service to the vast majority of areas that it ultimately intends to serve in American Samoa, citing the purported impracticability of expanding service further by any appreciable amount.<sup>65</sup> To the extent that Bluesky argues that applying the “keep-what-you-serve” regime would undermine its future ability to expand service in response to developments that reduce barriers to coverage, we find that allowing Bluesky to warehouse unserved areas indefinitely would undercut the intent of these rules by preventing others from providing coverage more quickly. Moreover, Bluesky retains the ability to expand service into unserved areas under the 700 MHz Phase II licensing rules.<sup>66</sup> We therefore conclude that giving Bluesky the

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<sup>59</sup> See *Auction of Broadband PCS Spectrum Scheduled for May 16, 2007*, Public Notice, 22 FCC Rcd 433, 443-44, paras. 23-30 (WTB 2007); *Auction of AWS-1 and Broadband PCS Licenses Rescheduled for August 13, 2008*, Public Notice, 23 FCC Rcd 7496, 7513-15, paras. 51-60 (WTB 2008).

<sup>60</sup> See *700 MHz Second Report and Order*, 22 FCC Rcd at 15348-49, paras. 153-58.

<sup>61</sup> *700 MHz Second R&O Order on Reconsideration*, 28 FCC Rcd at 2675, para. 9.

<sup>62</sup> Indeed, Bluesky's construction notifications reflect that it was able to construct facilities and expand its geographic coverage by more than 20 percent in less than a month.

<sup>63</sup> 47 CFR § 27.14(g)(2).

<sup>64</sup> See *700 MHz Second Report and Order*, 22 FCC Rcd at 15349, para. 156.

<sup>65</sup> Bluesky Waiver Request at 10-11.

<sup>66</sup> See 47 CFR 27.14(j).



remainder of its license term to continue expanding its network in American Samoa and, in the event that it fails the final construction requirement, returning the remaining unserved areas to the Commission's inventory for relicensing, serves the exact objectives the Commission had when it set forth stringent performance requirements for the 700 MHz band.

### **III. CONCLUSION**

For the reasons stated above, we hereby grant Bluesky's request to waive the Section 27.14(g)(1) interim construction deadline until March 6, 2017, and deny all alternative requests for waiver relief.

Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and Sections 1.3 and 1.925(b)(3)(i) of the Commission's rules, 47 CFR §§ 1.3, 1.925(b)(3)(i), the request for waiver of Section 27.14(g)(1) of the Commission's rules, 47 CFR § 27.14(g)(1), filed April 10, 2017, by AST Telecom, LLC d/b/a Bluesky, ULS File Nos. 0007595216 and 0007597075, is hereby GRANTED to the extent described above, and the alternative requests for relief from the interim construction benchmark are DISMISSED as moot.

And, IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and Section 1.925(b)(3) of the Commission's rules, 47 CFR § 1.925(b)(3), the request for waiver of Section 27.14(g)(2) of the Commission's rules, 47 CFR § 27.14(2), filed April 10, 2017, by AST Telecom, LLC d/b/a Bluesky, ULS File Nos. 0007595216 and 0007597075, is hereby DENIED.

These actions are taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331.

Sincerely,

Roger S. Noel  
Chief, Mobility Division  
Wireless Telecommunications Bureau